

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,) CR-18-00258-EJD
)
PLAINTIFF,) SAN JOSE, CALIFORNIA
)
VS.) MARCH 17, 2021
)
ELIZABETH A. HOLMES,) PAGES 1 - 11
)
DEFENDANT.)
_____)

TRANSCRIPT OF ZOOM PROCEEDINGS
BEFORE THE HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFF: UNITED STATES ATTORNEY'S OFFICE
BY: JOHN C. BOSTIC
JEFFREY B. SCHENK
150 ALMADEN BOULEVARD, SUITE 900
SAN JOSE, CALIFORNIA 95113

BY: ROBERT S. LEACH
KELLY VOLKAR
1301 CLAY STREET, SUITE 340S
OAKLAND, CALIFORNIA 94612

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER:

IRENE L. RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY
TRANSCRIPT PRODUCED WITH COMPUTER

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A P P E A R A N C E S: (CONT'D)

FOR DEFENDANT HOLMES: WILLIAMS & CONNOLLY LLP
BY: KEVIN M. DOWNEY
LANCE A. WADE
KATHERINE TREFZ
AMY SAHARIA
725 TWELFTH STREET, N.W.
WASHINGTON, D.C. 20005

LAW OFFICE OF JOHN D. CLINE
BY: JOHN D. CLINE
ONE EMBARCADERO CENTER, SUITE 500
SAN FRANCISCO, CALIFORNIA 94111

1 SAN JOSE, CALIFORNIA

MARCH 17, 2021

2 P R O C E E D I N G S

3 (COURT CONVENED AT 8:35 A.M.)

08:35AM 4 THE COURT: LET'S CALL 18-258, THIS IS UNITED STATES
08:35AM 5 OF AMERICA VERSUS ELIZABETH HOLMES.

08:35AM 6 LET ME CAPTURE THE APPEARANCE OF THE PARTIES, PLEASE.

08:35AM 7 WHO APPEARS FOR THE GOVERNMENT?

08:36AM 8 MR. LEACH: GOOD MORNING, YOUR HONOR.

08:36AM 9 ROBERT LEACH ON BEHALF UNITED STATES. I'M JOINED BY
08:36AM 10 JOHN BOSTIC, JEFF SCHENK, AND KELLY VOLKAR.

08:36AM 11 THANK YOU. GOOD MORNING EVERYONE. NICE TO SEE YOU ALL.

08:36AM 12 WHO APPEARS FOR THE DEFENDANT?

08:36AM 13 MR. DOWNEY: GOOD MORNING, YOUR HONOR.

08:36AM 14 KEVIN DOWNEY FOR MS. HOLMES.

08:36AM 15 I'M JOINED BY MY COLLEAGUES, LANCE WADE, KATHERINE TREFZ,
08:36AM 16 AND AMY SAHARIA AS WELL AS OUR COCOUNSEL, JOHN CLINE.

08:36AM 17 I'D ALSO LIKE TO NOTE FOR THE COURT THAT MS. HOLMES IS
08:36AM 18 PRESENT ON THE VIDEO CONFERENCE. I CAN SEE HER. SHE'S
08:36AM 19 CONSENTED TO PROCEEDING BY ZOOM.

08:36AM 20 IF THE NEED ARISES DURING THE CONFERENCE FOR US TO CONSULT
08:36AM 21 WITH MS. HOLMES ON ANY MATTERS, WE'VE ESTABLISHED A MEANS BY
08:36AM 22 WHICH TO DO SO, AND I'LL LET THE COURT KNOW THAT.

08:36AM 23 THE COURT: ALL RIGHT. THANK YOU VERY MUCH,
08:36AM 24 MR. DOWNEY.

08:36AM 25 GOOD MORNING, MS. HOLMES.

08:36AM 1 THANK YOU FOR YOUR DOCUMENT 754. I'VE RECEIVED THAT. I
08:36AM 2 BELIEVE IT WAS ON THE 12TH, LAST WEEK, THAT SUGGESTED THE
08:37AM 3 RESULT OF YOUR MEET AND CONFER REGARDING THE TRIAL SCHEDULE
08:37AM 4 THAT SHOULD BE IN PLACE NOW.

08:37AM 5 LET ME ASK THE PARTIES, IS THERE ANYTHING ELSE YOU WOULD
08:37AM 6 LIKE TO ADD TO THE STATUS CONFERENCE REPORT OR IN ADDITION YOU
08:37AM 7 WANT TO AUGMENT OR LET ME KNOW THIS MORNING?

08:37AM 8 ANYTHING FROM THE GOVERNMENT, MR. LEACH?

08:37AM 9 MR. LEACH: SORRY, YOUR HONOR, I WAS ON MUTE.

08:37AM 10 NOTHING FURTHER FROM THE GOVERNMENT, YOUR HONOR. AS WE
08:37AM 11 NOTE IN THE STATUS CONFERENCE STATEMENT, THE GOVERNMENT LEARNED
08:37AM 12 ABOUT THIS DEVELOPMENT ON MARCH 2ND, A WEEK OR SO AGO. IT'S
08:37AM 13 FRUSTRATING AND DISAPPOINTING TO LEARN ABOUT THIS NOW, BUT I
08:37AM 14 DON'T THINK IT IS FEASIBLE TO START A MULTI-MONTH TRIAL KNOWING
08:37AM 15 THERE'S A SUBSTANTIAL LIKELIHOOD THAT THE DEFENDANT WILL BE
08:37AM 16 INCAPACITATED.

08:37AM 17 WE'VE MET AND CONFERRED IN GOOD FAITH WITH THE DEFENSE ON
08:37AM 18 THE SHORTEST POSSIBLE CONTINUANCE. THAT IS WHAT IS REFLECTIVE
08:38AM 19 FROM THE GOVERNMENT'S PERSPECTIVE IN THE STATUS CONFERENCE
08:38AM 20 STATEMENT.

08:38AM 21 THE COURT: ALL RIGHT. THANK YOU, MR. LEACH.

08:38AM 22 MR. DOWNEY, ANYTHING YOU'D LIKE TO ADD? OR, MR. WADE,
08:38AM 23 ANYTHING TO ADD OR AUGMENT TO THE REPORT?

08:38AM 24 MR. LEACH: YOUR HONOR, NOTHING TO REPORT, JUST THAT
08:38AM 25 WE APPRECIATE THE CHANCE TO MEET AND CONFER WITH THE GOVERNMENT

08:38AM 1 OPEN THIS. I THINK A NUMBER OF CREATIVE PROPOSALS WERE PUT
08:38AM 2 FORWARD, INCLUDING TRYING TO MAYBE START A LITTLE BIT EARLY. I
08:38AM 3 THINK AFTER SOME DISCUSSION OF THAT WE CAME TO THE SCHEDULE WE
08:38AM 4 CAME TO, AND WE'VE AGREED. I HAVE NOTHING TO ADD TO IT.

08:38AM 5 THE COURT: ALL RIGHT. THANK YOU VERY MUCH.

08:38AM 6 I NOTE -- AND THANK YOU FOR PUTTING IN YOUR -- I THOUGHT
08:38AM 7 IT WAS APPROPRIATE TO PUT IN THE REPORT THE NUMBER OF TIMES THE
08:38AM 8 CASE HAS BEEN CONTINUED FOR A VARIETY OF REASONS. OF COURSE,
08:38AM 9 AS WE TALKED ABOUT LAST TIME, THE -- HERETOFORE THE MOST
08:38AM 10 SIGNIFICANT FACTOR WAS THE COVID CRISIS THAT WE ALL HAVE BEEN
08:38AM 11 ENDURING AND THAT, OF COURSE, CAUSED THE CASE TO BE CONTINUED
08:38AM 12 OWING TO THE SAFETY OF THE PUBLIC AS WELL AS ALL OF THE
08:39AM 13 LITIGANTS AND PARTICIPANTS.

08:39AM 14 I WANTED YOU TO MEET AND CONFER SUCH THAT YOU COULD HAVE A
08:39AM 15 REALISTIC CONVERSATION ABOUT WHERE THE TRIAL MIGHT ENGAGE AND
08:39AM 16 WHEN REALISTICALLY THE CASE CAN GO.

08:39AM 17 I KNOW MR. DOWNEY, MR. WADE, AND MS. SAHARIA HAVE TOLD ME
08:39AM 18 TIME AGAIN THAT THEIR CLIENT WISHES TO GO TO TRIAL AND TO
08:39AM 19 CHALLENGE THE CHARGES AGAINST HER WITH SOME SPEED.

08:39AM 20 AND I KNOW THE GOVERNMENT IS EAGER TO PROSECUTE THE CASE.
08:39AM 21 THEY HAVE TOLD US ABOUT VICTIM CONCERNS AND OTHER WITNESS
08:39AM 22 CONSTRAINTS THAT WE KNOW THAT CONTINUANCES OF TRIAL ENGENDER
08:39AM 23 FOR THOSE PEOPLE.

08:39AM 24 THE COURT TIME IS OBVIOUSLY SOMETHING THAT PERHAPS THE
08:39AM 25 LESSER OF ALL OF YOUR CONCERNS, BUT WE HAVE TO LOGISTICALLY

08:39AM 1 PLAN FOR A TRIAL OF THIS DURATION. WE HAVE TO LOGISTICALLY
08:40AM 2 PLAN OUR FACILITY, AND MY COLLEAGUES HAVE TO ADJUST, WE'RE
08:40AM 3 DOING THAT, I SHOULD TELL YOU WHEN WE PLAN WHAT TRIAL SHOULD BE
08:40AM 4 AVAILABLE IN OUR FACILITY THAT WE CAN SAFELY ALLOW THE PUBLIC
08:40AM 5 TO ENTER OUR COURTROOMS.

08:40AM 6 I THINK WE'RE ALL GRATEFUL THAT THE PANDEMIC, AT LEAST AS
08:40AM 7 FAR AS THE PANDEMIC SCENE GOES, THINGS LOOK GOOD. PEOPLE ARE
08:40AM 8 BEING VACCINATED IN GREATER NUMBERS, AND WE HOPE THAT PEOPLE
08:40AM 9 CONTINUE TO EXERCISE GOOD JUDGMENT AND SAFETY SUCH THAT THIS
08:40AM 10 PANDEMIC CAN BE PUT IN OUR REARVIEW MIRROR SO TO SPEAK.

08:40AM 11 BUT THERE ARE STILL SOME CONSTRAINTS GOING FORWARD.

08:40AM 12 I JUST WANT TO ASK ALL OF YOU REALISTICALLY, IS
08:40AM 13 AUGUST 31ST, IS THAT A REALISTIC DATE? IS THAT SOMETHING THAT
08:40AM 14 -- AND I KNOW YOU'VE MET AND CONFERRED. THANK YOU, MR. DOWNEY,
08:40AM 15 FOR TELLING ME THAT, AND MR. LEACH.

08:40AM 16 BUT I JUST REALLY WANT TO AS BEST WE CAN -- WE CAN'T
08:41AM 17 PREDICT THE FUTURE, OF COURSE, BUT I DO WANT TO SECURE AS FIRM
08:41AM 18 A DATE AS POSSIBLE TO START THE TRIAL. I NOTE THE AUGUST 31ST
08:41AM 19 DATE IS THE WEEK BEFORE -- I THINK THERE'S A HOLIDAY, A LABOR
08:41AM 20 DAY HOLIDAY THAT FOLLOWS.

08:41AM 21 IF WE SET THE CASE FOR AUGUST 31ST, IT WOULD BE -- MY HOPE
08:41AM 22 IS THAT PERHAPS WE COULD SELECT A JURY IN THAT TIME AND THEN
08:41AM 23 SUBSEQUENT TO THE LABOR DAY HOLIDAY BREAK WE WOULD START
08:41AM 24 EVIDENCE IN EARNEST. IT LOOKS LIKE THAT'S PERHAPS WHAT YOU
08:41AM 25 HAVE DEVISED OF YOUR SCHEDULE, BUT RECOGNIZING THAT NO ONE CAN

08:41AM 1 PREDICT THE FUTURE, CAN I JUST GET SOME THOUGHTFUL COMMITMENT
08:41AM 2 FROM YOU THAT THE 31ST IS SOMETHING THAT IS REALISTIC?

08:41AM 3 I ASSUME THAT'S WHAT YOUR DOCUMENT TELLS ME, BUT I HOPE
08:41AM 4 YOU UNDERSTAND AND APPRECIATE WHY I'M PURSUING THIS.

08:41AM 5 MR. DOWNEY.

08:41AM 6 MR. DOWNEY: YOUR HONOR, FROM THE DEFENSE'S
08:42AM 7 PERSPECTIVE OBVIOUSLY WE WANT A TRIAL DATE. AS YOUR HONOR
08:42AM 8 NOTED, MS. HOLMES IS EAGER TO CONTEST THE CHARGES.

08:42AM 9 BASED ON THE MEDICAL ADVICE THAT WE HAVE GOTTEN, SETTING
08:42AM 10 THE SCHEDULE AT A PACE THAT WOULD BE FASTER THAN SIX WEEKS POST
08:42AM 11 BIRTH WOULD BE AGGRESSIVE AND NOT RECOMMENDED.

08:42AM 12 OBVIOUSLY SETTING IT FOR SEVEN WEEKS IS, YOU KNOW, TRYING
08:42AM 13 TO CONTROL FOR THAT MEDICAL RECOMMENDATION.

08:42AM 14 I -- MY ANSWER TO THE COURT IS WE HOPE IT IS FROM THE
08:42AM 15 DEFENSE PERSPECTIVE. WE DON'T FORESEE DIFFICULTIES BASED ON
08:42AM 16 WHAT WE KNOW RIGHT NOW. ANY DIFFICULTIES THAT AROSE WOULD BE
08:42AM 17 OF A MEDICAL NATURE THAT WE CAN'T ANTICIPATE RIGHT NOW.

08:42AM 18 THE COURT: ALL RIGHT. FAIR ENOUGH.

08:42AM 19 MR. LEACH.

08:42AM 20 MR. LEACH: YOUR HONOR, FROM THE GOVERNMENT'S
08:42AM 21 PERSPECTIVE IT'S REALISTIC. YOU KNOW, OUR SIDE WILL BE
08:42AM 22 PREPARED, AND, OF COURSE, WE WERE READY TO BE PREPARED IN JULY,
08:42AM 23 AND WE WILL BE PREPARED AUGUST 31ST. I THINK A LOT OF THIS IS
08:43AM 24 DRIVEN BY WHEN THE DEFENDANT WILL BE PHYSICALLY ABLE TO
08:43AM 25 PARTICIPATE IN HER DEFENSE.

08:43AM 1 WE'VE DONE OUR BEST TO COME UP WITH A REALISTIC DATE BASED
08:43AM 2 ON OUR UNDERSTANDING, AND FROM THE GOVERNMENT'S PERSPECTIVE
08:43AM 3 THAT'S MORE LIMITED THAN THE DEFENSE, BUT WE THINK THIS IS
08:43AM 4 REALISTIC AND APPROPRIATE.

08:43AM 5 I CAN'T PREDICT THE FUTURE THERE, BUT I -- THAT'S THE
08:43AM 6 SPIRIT WITH WHICH WE HAVE PROPOSED IT.

08:43AM 7 THE COURT: THANK YOU. I APPRECIATE THOSE COMMENTS.

08:43AM 8 LET ME TELL YOU THAT WE WILL ALSO ENGAGE OTHER PROTOCOLS
08:43AM 9 IN OUR COURTHOUSE TO ACCOMMODATE AS BEST WE CAN ANY NEEDS THAT
08:43AM 10 MIGHT COME UP IN REGARDS TO ANY TRIAL PARTICIPANT. SO WE'LL
08:43AM 11 BEAR THAT IN MIND. WE CAN TALK ABOUT THAT AT OUR PRETRIAL
08:43AM 12 CONFERENCE ADDITIONALLY AS TO WHAT OTHER SPECIAL NEEDS OR
08:43AM 13 CONDITIONS THAT WE NEED TO SET UP IN OUR COURTHOUSE.

08:43AM 14 MR. LEACH: THANK YOU, YOUR HONOR.

08:43AM 15 THE COURT: WE'LL INVESTIGATE THAT AND ENDEAVOR TO
08:44AM 16 HAVE THOSE IN PLACE FOR THE COMFORT OF EVERYONE.

08:44AM 17 ALL RIGHT. THANK YOU. ANYTHING ELSE FROM SOMEONE?
08:44AM 18 ANYONE ELSE HAVE ANYTHING ELSE TO SAY?

08:44AM 19 MS. SAHARIA, I TYPICALLY CALL ON YOU TO MAKE A COMMENT OR
08:44AM 20 TWO. ANYTHING ELSE YOU WOULD LIKE TO ADD?

08:44AM 21 MS. SAHARIA: NO, YOUR HONOR.

08:44AM 22 THE COURT: ALL RIGHT. GREAT. WELL, THANK YOU FOR
08:44AM 23 YOUR STATUS REPORT. WE, OF COURSE, WISH MS. HOLMES THE BEST
08:44AM 24 WISHES AND WISH FOR HER EVENT TO BE A HAPPY ONE AND A HEALTHY
08:44AM 25 ONE. WE APPRECIATE THAT. WE RESPECT THAT, OF COURSE.

08:44AM 1 OWING TO THE SITUATION HERE, AND I DON'T MEAN THAT
08:44AM 2 PEJORATIVELY, I MEAN THAT IN A POSITIVE SENSE, I THINK THE
08:44AM 3 PARTIES HAVE MET AND CONFERRED AND RECOGNIZE THAT THIS CASE
08:44AM 4 COULD NOT, FOR MEDICAL REASONS, GO FORWARD ON THE TIME THAT
08:45AM 5 WE'VE CURRENTLY SET IT FOR JULY, JULY 13TH.

08:45AM 6 THE PARTIES HAVE MET AND CONFERRED AND AGREED THAT THE
08:45AM 7 TRIAL DATE SHOULD BE RESET TO AUGUST 31ST, AUGUST 31, 2021, AND
08:45AM 8 THAT THE PARTIES HAVE AGREED AND ASKED THE COURT PURSUANT TO
08:45AM 9 THEIR STIPULATION TO ACCEPT THEIR STIPULATION THAT THE TRIAL
08:45AM 10 DATE BE SET FOR AUGUST 31ST AND THAT TIME BE EXCLUDED TO
08:45AM 11 AUGUST 31ST FROM THE CURRENT JULY 13TH TRIAL DATE. THE COURT
08:45AM 12 WILL EXCLUDE TIME TO ALLOW FOR EFFECTIVE PREPARATION OF
08:45AM 13 COUNSEL. THE PARTIES HAVE ALSO STIPULATED AND AGREED THAT THE
08:45AM 14 ENDS OF JUSTICE SERVE BY EXCLUDING TIME FROM JULY 13TH TO
08:45AM 15 AUGUST 31ST IS APPROPRIATE AND OUTWEIGH THE BEST INTERESTS OF
08:45AM 16 THE PUBLIC AND THE DEFENDANT IN A SPEEDY TRIAL AND THE COURT SO
08:45AM 17 FINDS.

08:45AM 18 THE COURT WILL CONTINUE THIS CASE THEN FOR TRIAL TO THE
08:46AM 19 AUGUST 31ST, 2021 DATE. THAT'S AT 9:00 A.M.

08:46AM 20 I'M NOT GOING TO DISTURB, AND I APPRECIATE THE FACT THAT
08:46AM 21 YOU HAVE ALL AGREED THAT WE SHOULD NOT DISTURB ANY OF THE OTHER
08:46AM 22 DATES THAT ARE CURRENTLY IN PLACE, THAT IS, OUR DATES FOR
08:46AM 23 PRETRIAL MOTIONS AND ANY OTHER DEADLINES THAT PREVIOUSLY HAVE
08:46AM 24 BEEN ESTABLISHED. THOSE WILL REMAIN IN PLACE. AND THE NEXT
08:46AM 25 TIME WE'LL SEE EACH OTHER I THINK IS MAY, IN EARLY MAY FOR IN

08:46AM 1 LIMINE MOTIONS AND OTHER PRETRIAL MATTERS.

08:46AM 2 I WOULD ASK, THOUGH, TO THE EXTENT THAT YOU CAN,
08:46AM 3 MR. DOWNEY, IF YOU WOULD KEEP THE COURT AND COUNSEL INFORMED OF
08:46AM 4 ANY CHANGES AND IF ANYTHING HAPPENS THAT YOU THINK WOULD CHANGE
08:46AM 5 THE SCHEDULE OR UPDATES ON THINGS TO THE EXTENT THAT YOU'RE
08:46AM 6 ABLE TO DO THAT.

08:46AM 7 MR. DOWNEY: WE'LL CERTAINLY DO THAT, YOUR HONOR.

08:46AM 8 THE COURT: ALL RIGHT. THANK YOU.

08:46AM 9 ANYTHING FURTHER FROM ANY PARTY?

08:46AM 10 MR. LEACH, FROM THE GOVERNMENT, ANYTHING FURTHER FOR THIS
08:46AM 11 MORNING?

08:46AM 12 MR. LEACH: NOT FROM THE GOVERNMENT, YOUR HONOR.

08:47AM 13 THANK YOU VERY MUCH FOR TAKING THE TIME.

08:47AM 14 THE COURT: IT'S NICE TO SEE YOU ALL. THANK YOU.

08:47AM 15 MR. DOWNEY, ANYTHING FURTHER FROM YOUR TEAM?

08:47AM 16 MR. LEACH: ONLY TO WISH YOUR HONOR A HAPPY
08:47AM 17 ST. PATRICK'S DAY AND ALL OF THE COURT STAFF THERE AS WELL.

08:47AM 18 THE COURT: WELL, LIKEWISE TO YOU AND EVERYONE. BE
08:47AM 19 OF GOOD HEALTH EVERYONE. YOU AND YOUR FAMILIES STAY SAFE, AND
08:47AM 20 I LOOK FORWARD TO SEEING YOU IN MAY. SOON ENOUGH.

08:47AM 21 ALL RIGHT. THANK YOU.

08:47AM 22 MR. LEACH: THANK YOU, YOUR HONOR.

08:47AM 23 MS. SAHARIA: THANK YOU, YOUR HONOR.

08:47AM 24 MR. LEACH: THANK YOU.

08:47AM 25 THE CLERK: COURT IS ADJOURNED, AND THIS WEBINAR

08:47AM

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SHALL TERMINATE.

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(COURT CONCLUDED AT 8:47 A.M.)

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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

A handwritten signature in black ink that reads "Irene Rodriguez". The signature is written in a cursive, flowing style with a large, decorative flourish at the end of the last name.

IRENE RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074

DATED: JULY 21, 2021